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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

ROGER M. CORMAN, et al.,

Plaintiffs and Appellants,

v.

ROGER W. CORMAN, et al.,
as Trustees, etc.,

Defendants and Respondents.

B248816

(Los Angeles County Super. Ct.
Nos. SP007923, SP007983, SP007984)

APPEAL from orders of the Superior Court of Los Angeles County,
Reva Goetz, Judge. Affirmed.

Hillel Chodos and Rafael Chodos; Greines, Martin, Stein & Richland,
Irving H. Greines, Robin Meadow and Marc J. Poster for Plaintiffs and Appellants.

Law Offices of Howard S. Fisher, Howard S. Fisher and Alexander J. Fisher;
Klapach & Klapach and Joseph S. Klapach for Defendant and Respondent Roger W.
Corman.

Bird, Marella, Boxer, Wolpert, Nessim, Drooks & Lincenberg and Joel E. Boxer;
Klapach & Klapach and Joseph S. Klapach for Defendant and Respondent Julie Corman.

Carico Johnson Toomey, David Carico, Christopher D. Carico and
Golnaz Yazdchi for Defendant and Respondent Guardian ad Litem.

INTRODUCTION

Roger W. and Julie Corman established a series of irrevocable trusts for the benefit of their four children. Over time, the assets of the trusts increased in value to more than \$100 million, which their four children are scheduled to receive in various percentages upon reaching certain specified ages. Two of the Cormans' children, Roger M. and Brian Corman, filed these actions to compel trust accountings and to remove their parents as trustees. This appeal, just one small piece of over four years of bitter internecine litigation, is from orders authorizing Roger W. and Julie Corman to use money from the assets of the trusts to pay fees and costs of their separate attorneys and a guardian ad litem appointed by the court to represent their unborn grandchildren. We affirm the probate court's orders awarding these interim attorneys' fees and costs.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Cormans and Their Family Trusts*

Roger W. and Julie Corman have four children (Roger M., Brian, Catherine, and Mary), for whom they created three irrevocable trusts: the Pacific Trust in 1978, the Tessa Trust in 1987, and the MG Trust in 1993. For the Pacific Trust, Roger W. Corman is the trustee, and Julie Corman and Bank of America National Trust and Savings Association are the special trustees. The Pacific Trust provides for distribution of each child's "[p]rincipal and accumulated income . . . after the death of both [Roger and Julie Corman]" as follows: one-third 25 years after inception of the trust, one-half the remaining balance 30 years after inception of the trust, and the remaining balance 35 years after inception of the trust. The trustees can also distribute up to \$5,000 annually from the trust to each child. The provisions of the trust give Roger W. Corman various powers, including to manage trust assets, borrow money, and make allocations, without incurring any "liability of any nature whatsoever . . . except for fraud or dishonesty on his part" Of particular relevance to this appeal, the Pacific Trust authorizes the trustee

to use principal or income to pay expenses incurred in the administration or protection of trust assets including taxes, assessments, and attorneys' fees. The Pacific Trust began with \$600,000 from Roger W. Corman's separate property and has increased in value to as much as \$100 million, primarily as a result of profits from films produced by Roger W. and Julie Corman and their management and investment of the trust's assets.

For the Tessa Trust, which the Cormans also established to receive and invest proceeds from their films,¹ Julie Corman is the trustee and Roger W. Corman is the special trustee. The trust provides for distributions of the principal and accumulated income in various percentages after the death of both trustors and when each child reaches the age of 25, 30, 35, 45, and 55. The trust gives the special trustee the discretion, however, to distribute trust income not just for the beneficiaries' "bare necessities of life," but also "for those luxuries constituting a part of the standard of living to which a beneficiary . . . has become accustomed, including but not limited to the expenses of travel or the purchase of a new home . . . jewelry, furs, automobiles and similar items" Although there is no express provision authorizing payment of attorneys' fees, the trust does limit the trustees' liability to acts of fraud and dishonesty, and includes indemnification and hold-harmless provisions. The Tessa Trust began with a transfer from Roger W. and Julie Corman of \$59,723. Roger M. and Brian Corman claim that the assets of the Tessa Trust have grown to over \$8 million.

For the MG Trust, Roger W. and Julie Corman are the co-trustees. The MG Trust provides for the accumulation of all income of principal until the deaths of both Roger W. and Julie Corman. Distributions occur when each child reaches the age of 30, 35, 40, and 50 years old,² although the trust gives the children certain rights to request earlier

¹ Collectively, Roger W. and Julie Corman produced over 168 films for the Pacific and Tessa trusts.

² The parties dispute whether Roger W. and Julie Corman both must have died before distributions from the MG Trust can occur at the specified ages.

withdrawals from their accounts. The trust gives the trustees various powers, including the power “[t]o commence or defend such litigation with respect to the trust or any property of the trust estate as the trustees may deem advisable at the expense of the trust,” and to employ attorneys to assist them in administering the trust and to pay them from income or principal of the trust. The MG Trust apparently owns an interest, through a partnership, in a building, but does not have significant liquid assets.

B. *The Probate Litigation*

In 2009 Roger M. Corman, later joined by Brian Corman, filed petitions for accountings of the three trusts and for removal or suspension of his parents as trustees. The petitions alleged that the trustees had used trust assets “for their own personal benefit, . . . jeopardized the assets of the [trusts] through loans to friends and family . . . that often have forborne interest, . . . jeopardized the beneficial tax treatment for the trust assets through borrowing millions of dollars from the [trusts], . . . jeopardized the beneficial tax treatment for the trust assets by secreting money offshore in order to enable ease of personal loan-making and access to greater capital, and . . . formed qualified personal real estate trusts and a related lease that creates significant tax exposure for the property of the [trusts].” The petitions alleged that, because the trustees violated their fiduciary duties under the terms of the trusts and Probate Code, the court should remove them and order verified trust accountings.

Roger M. and Brian Corman claimed that, since childhood, their parents told them that the Pacific Trust would provide them and their sisters “with a luxurious lifestyle,” and that their parents “would regularly show the Corman Children documents reflecting the exponential growth of the” trusts and showing that the trusts “were growing in value in the tens of millions of dollars.” Roger M. and Brian Corman alleged that throughout their lives they “have enjoyed luxurious lifestyles, including substantial funds to spend for cars, meals, travel, and entertainment.” As adults, Roger M. and Brian Corman received many distributions from the Pacific Trust, and over the years their parents asked them to “memorize the names and locations of foreign trustees, law firms and banks

specifically so that [they] would know where the assets were in the event of [Roger W. Corman's] passing.” They also alleged that, in retaliation for requesting the accountings and filing the probate petitions, their parents fired them from the family film company, Concorde-New Horizons, and ceased making their usual and customary distributions from the trusts. Roger M. and Brian Corman claimed that their parents had borrowed over \$13 million from the trusts with inadequate security and forced the children to approve the loans by threatening to withhold distributions from the trusts. They also claimed that their mother's behavior had become “increasingly erratic,” that she “would verbally castigate [Roger W. Corman] in front of their children and chastise him for discussing the trusts with them,” and that she “threatened to leave [him] if he ever discusse[d] finances with his children without her present.”³ According to the Corman sons, Julie Corman's unusual behavior began when Roger W. Corman announced in the spring of 2008 that soon “there would be substantial distributions” from the three trusts “in the collective amount of \$120,000,000 to \$160,000,000, with each beneficiary's share to be between \$30,000,000 and \$40,000,000”

C. *The Trial That Never Was*

The probate cases went to trial in July 2012 before Judge Joseph Biderman. On December 4, 2012 Judge Biderman issued a 14-page tentative decision pursuant to rule 3.1590 of the California Rules of Court. Among other rulings, Judge Biderman approved the Tessa Trust and MG Trust accountings, approved the Pacific Trust accountings for

³ The two Corman sons alleged: “Anytime the trust issue is raised in the presence of [Julie Corman], an argument immediately ensues. On October 25, 2009, after imbibing several cocktails, [Julie Corman] went on an offensive against her youngest child, Mary Corman, continually berating her for such an extended duration that her sister, Catherine Corman, felt compelled to intervene and physically blocked [Julie Corman] from entering [] Mary's bedroom where she was seeking refuge. . . . Mary was crying throughout that time. . . . In response, [Julie Corman] struck Catherine in the face with her hand, causing a large red mark to appear on Catherine's face in the area where [Julie Corman] had stuck her.”

the years 2004 to 2007, but denied approval of the Pacific Trust accountings for the years 2008 to 2010 because they were incomplete. Judge Biderman found that Roger M. and Brian Corman had presented insufficient evidence to justify removing Roger W. and Julie Corman as trustees of the MG and Tessa Trusts, and concluded that the petition to remove them as trustees of the Pacific Trust was moot in light of the fact that they had already resigned as trustees of that trust. Judge Biderman declined to surcharge Roger W. and Julie Corman “with respect to any of the Trusts in their handling of the domestic assets.”⁴

Judge Biderman made numerous factual findings, including that “every decision made and action taken by Roger [W.] and Julie were only in furtherance of enriching the beneficiaries to the fullest extent possible,” and that they “acted with one motivation – to benefit the Trusts and their beneficiaries. In fact, the evidence revealed that Roger [W.] and Julie made many multi-million dollar decisions to their own financial detriment in order to protect the Trusts.” Judge Biderman also found that Roger M. and Brian Corman had “not submitted any credible evidence of any profit that the trustees made from the Trusts,” that, although Roger W. and Julie Corman may have failed “to keep the Trusts’ assets separate or to maintain an adequate paper trail,” “if anything, Roger [W.] and Julie absorbed enormous financial losses to avoid subjecting the beneficiaries to missing out on any of their anticipated largesse,” and that “neither Roger [W.] nor Julie’s actions as trustee amount to fraud or dishonesty on any beneficiaries and that no Trust and, by consequence, no beneficiary suffered any damage as a result of actions taken as trustees.” Finally, Judge Biderman found that Roger M. and Brian Corman’s “conjecture about improper attorney’s fees being incurred is without evidentiary support,” and “that the attorney’s fees were properly accounted for by the trustees.” Thus, Judge Biderman resolved all three probate actions in favor of the parents and against the sons, bringing closure to years of contentious intra-family litigation.

⁴ Judge Biderman also concluded that he lacked jurisdiction to resolve certain issues regarding foreign assets.

But the resolution was short-lived, and closure evanescent. On January 16, 2013 the court filed and served the parties with a document entitled “Notice of Disqualification.” This document stated that Judge Biderman “has disqualified himself from further proceedings in this matter pursuant to Code of Civil Procedure section 170.1[(a)](8)(A)(ii), as a ‘matter before the judge include[d] issues relating to the enforcement of either an agreement to submit a dispute to an alternative dispute resolution process or . . . other final decision by a dispute resolution neutral.’” The notice explained that Roger M. and Brian Corman had filed an ex parte application on June 7, 2012 requesting “certain orders regarding rulings that may be made by Judge Victor Person (Retired), who was affiliated with ADR Services, Inc.,” and that “[w]ithin two years prior to June 7, 2012, Judge Biderman had participated in discussions with ADR Services, Inc., regarding prospective service as a dispute resolution neutral.”⁵ The notice disclosed that Judge Biderman “did not realize the disqualification existed until January 8, 2013,” and he advised the parties that they could waive the disqualification pursuant to Code of Civil Procedure section 170.3, subdivision (b)(1). Judge Biderman stated that, if all of the parties waived the disqualification, “then the proceedings would continue”; otherwise, “the matter will be transferred to another judge for further proceedings” and all rulings after June 7, 2012 would be void.

Roger M. and Brian Corman did not waive the disqualification. On January 23, 2013 the Supervising Judge of the Probate Division reassigned the matter to Judge Reva Goetz.

D. *The Attorneys’ Fees Petitions*

As noted, two of the three trusts expressly authorize payment of attorneys’ fees from trust assets to pay attorneys retained by the trustees. The Pacific Trust provides:

⁵ Judge Biderman explained at the hearing that, “although the substance of any order made by Judge Person was never brought before the court, the fact that the issue of a final decision by Judge Person was brought before the court, and that itself, creates the disqualification.”

“The Trustee shall pay out of principal or income as he may elect, or partially out of each in such shares as he may determine . . . attorneys’ fees . . . and other such expenses incurred in the administration or protection of this trust.” The MG Trust authorizes the trustees to “commence or defend such litigation with respect to the trust or any property of the trust estate as the trustees may deem advisable at the expense of the trust.” The MG Trust also gives the trustees the power to employ attorneys “to assist the trustees in the administration of the trust and to rely on the advice given by such persons,” and provides that “[r]easonable compensation for all services performed by such persons shall be paid from the trust estate” The Tessa Trust does not have a similar provision, but it does state, “No liability of any nature whatsoever shall accrue to any individual Trustee . . . for his actions as Trustee, except for fraud or dishonesty on his part, and each beneficiary hereunder by accepting benefits received shall be deemed to have agreed to indemnify and hold the said Trustee harmless from claims or liability for matters arising by reason of his actions as such Trustee, except for fraud or dishonesty on his part.” From this provision Roger W. Corman argued that, because Judge Biderman found that neither trustee’s actions amounted to fraud or dishonesty, “it follows that the beneficiaries of the Tessa Trust are to indemnify Roger [W.] Corman for the claims they have brought against him and accordingly pay for the legal fees that he has incurred in defending the action which has been brought against him as Special Trustee of the Tessa Trust.”⁶

Nevertheless, on June 25, 2010 the probate court entered an order essentially freezing the trusts’ bank accounts, which required the trustees’ attorneys to petition the court for approval and payment of their bills. Judge Biderman and Judge Craig D. Karlan, who heard the case prior to Judge Biderman, authorized payments for attorneys’

⁶ Roger M. and Brian Corman did not argue that the Tessa Trust does not allow the trustees to pay their attorneys from trust assets. As will be explained, they argue that it is premature to pay the trustees of all three trusts anything until the case is over and, even then, that the Tessa Trust should only pay for attorneys’ fees for legal work that was for the benefit of and provided to that trust.

fees and costs from the Pacific Trust to counsel for Roger W. Corman. These orders included awards of attorneys' fees to counsel for Roger W. Corman of \$110,000 on December 3, 2010, \$174,653.37 on August 26, 2011, \$132,902.50 on December 16, 2011, and \$107,303.48 on April 19, 2012. Similarly, Judge Biderman and Judge Karlan approved payments to counsel for Julie Corman of \$172,973.57 on August 26, 2011 and \$146,083.50 on April 19, 2012.

After Judge Biderman had issued his tentative decision on December 4, 2012, but before he gave notice of his disqualification on January 16, 2013, Roger W. Corman filed on January 11, 2013 a verified application for an order allowing him to pay his attorneys from trust assets. This application sought approval to pay his attorneys \$422,947.50 in fees and \$6,525.50 in costs for the time period February 26, 2012 to November 15, 2012, as well as reimbursement for \$150,000 he had advanced to his attorneys.

The application included an 11-page declaration from counsel for Roger W. Corman explaining the nature of the work performed, organized into 11 categories, and outlining the tasks that counsel had completed during various stages of the litigation. Counsel for Roger W. Corman explained that their legal representation included litigating "collateral actions in the United States . . . and in the British Virgin Islands" initiated by Roger M. and Brian Corman, filing and responding to numerous motions and ex parte applications, making over 50 court appearances, dealing with "approximately 20 different law firms with more than 30 individual attorneys," receiving and responding to emails "easily in the thousands" at an estimated rate of 50 per day, reading over 200 separate pleadings, reviewing an estimated "million pages of documents" in more than 450 boxes, appearing before discovery referees, negotiating confidentiality agreements, attending "10 full days of depositions in the Trust cases" plus additional depositions in the employment cases,⁷ participating in four days of settlement conferences and numerous

⁷ Roger M. and Brian Corman filed a separate action against their parents for wrongful termination from the family film production company.

settlement discussions, and reviewing and analyzing over 10,000 pages of documents in preparation for trial. Counsel described the additional time spent “dealing with the administration of the Trusts,” defending the claims regarding the \$100 million in foreign assets, and defending against the attempts by Roger M. and Brian Corman to become successor trustees. Finally, counsel stated that the trial occurred “over approximately six weeks on 13 different days,” followed by extensive post-trial briefing. Counsel for Roger W. Corman supported the application with 113 pages of time sheets and 13 pages of cost itemizations.

On the issue of allocating the attorneys’ fees among the three trusts, counsel for Roger W. Corman noted that the court had previously ordered the Pacific Trust to pay all fees because most of the assets were in that trust and most of the claims related to that trust, and he suggested that the court “might wish to consider continuing this practice” Counsel for Roger W. Corman stated that, in the alternative, the court “might also wish to consider allocating the fees/costs amongst the three trusts on the basis of the time devoted to the trust’s issues, and claims made that relate to each trust.” Counsel “estimate[d] that an allocation based upon such factors would be 85 percent from Pacific Trust, 10 percent from Tessa Trust, and 5 percent from MG Trust; or such other allocation as the Court deems appropriate.”

In April 2013, after the case had been transferred to Judge Goetz, Roger W. Corman filed a verified supplement to his fees and costs application seeking payment and reimbursement of fees and costs during the time period November 16, 2012 to March 31, 2013. The supplement sought an additional \$92,165 in attorneys’ fees, \$2,652.64 in costs, and \$100,000 in reimbursement to Roger W. Corman for fees he had advanced. In support of this application, counsel for Roger W. Corman submitted another detailed declaration, 33 pages of time sheets, and three pages of cost itemizations. The legal work included time spent in connection with post-trial hearings and the disqualification hearing. The supplement also asked for an order authorizing the trustee of Pacific Trust “to pay all future invoices submitted . . . for legal services incurred in this proceeding . . . without the necessity of further Court order.”

Julie Corman also filed a verified petition for approval and reimbursement of her attorneys' fees and costs. Her petition sought payment of \$80,674.98 in attorneys' fees and costs, \$409,002.71 in reimbursement by the Pacific Trust for fees and costs she had advanced (for a total of \$489,677.69), and an order authorizing payment of her future legal bills by the trust. Counsel for Julie Corman described categories of tasks performed similar to those performed by counsel for Roger W. Corman. Counsel for Julie Corman supported the application with a five-page declaration, 63 pages of time sheets, and four pages of itemized costs.

Meanwhile, on October 10, 2012, after the first trial (in July 2012) but before Judge Biderman's tentative decision (in December 2012), the guardian ad litem for the unborn grandchildren of Roger W. and Julie Corman had filed a verified petition for fees and costs. The application sought \$387,042 in attorneys' fees and \$36,450.38 in costs for the time period March 2012 to October 2012. The guardian ad litem described his participation in approximately 55 pre-trial court appearances, the review of thousands of emails and tens of thousands of pages of discovery, the production of approximately 50 subpoenas to various financial institutions, "extensive negotiations over the processing of e-discovery" and resolution of discovery disputes with two discovery referees, the preparation of 250 trial exhibits, and participation in 10 days of depositions and 13 days of trial. The guardian ad litem stated that, among his "unofficial duties," he "played an active role in trying to get the parties to reach a settlement that would protect all interested parties," which in his opinion "would have been a 'win win' for the Corman family." Counsel for the guardian ad litem supported the application with a 14-page, single-spaced declaration describing 20 categories of legal services, 52 pages of detailed time sheets, and five pages of cost itemizations. The guardian ad litem also sought

recovery of \$12,300 paid to a court-appointed expert under Evidence Code section 730.⁸ On December 11, 2012 Judge Biderman granted the application.

On April 12, 2013, after the disqualification dust had settled, the guardian ad litem re-noticed his petition for fees and costs to be heard with the petitions by Roger W. and Julie Corman. Although Judge Biderman had ordered the payment of \$387,042 in fees (and the payment of \$12,300 to the court-appointed expert), the guardian ad litem sought confirmation of this payment because of Judge Biderman's "retroactive disqualification." The guardian ad litem also sought approval of an additional \$110,374 in attorneys' fees plus costs. The guardian ad litem summarized his prior petition and included 21 pages of time sheets from October 6, 2012 to April 9, 2013 and a page of itemized costs.

E. The Combined Opposition

In April 2013 Roger M. and Brian Corman filed a combined opposition to the fee petitions filed by Roger W. Corman, Julie Corman, and the guardian ad litem. Roger M. and Brian Corman argued that the probate court could not "rule on any of these petitions until it has heard the evidence in the new trial and made its own determinations as to the propriety of the claims advanced and positions taken." They also argued that the work of the three law firms was duplicative and sought payments from the wrong trust (because Julie Corman's fees should be paid from the Tessa Trust). Roger M. and Brian Corman did not, either in their prior oppositions or in opposition to the April 2013 fee applications, object to any of the evidence submitted in support of the applications or challenge the hourly rates of counsel for the petitioning parties.

⁸ The court appointed an international tax expert to provide opinions on foreign tax issues, the IRS Tax Amnesty Program, and potential income, gift, and estate tax liabilities.

F. *The Rulings*

Judge Goetz heard the fee petitions on May 16, 2013. At the hearing the court asked counsel for Roger M. and Brian Corman why they had filed one “general objection” to all three fee petitions, and she noted, “I’m dealing with three separate trusts and my normal practice is that we have separate petitions filed for each separate matter.” Observing that the parties appeared to have treated the fee petitions “in a combined fashion,” the court stated it was “trying to get a handle on what the prior culture was” with Judge Karlan and Judge Biderman and that the court was “okay with following that as an accommodation” Counsel for Roger W. Corman explained that, because “the work is so similar for each [petition] and the [beneficiaries] are essentially the same, that was thought to be the most efficient way” to proceed. Apparently, none of the parties objected to this procedure. The court indicated that it did not have a problem with resolving the fee petitions through the Pacific Trust and that the court could make “some allocation of fees” at a later date.

With respect to the fee awards approved by Judge Biderman, the court stated, “I’m inclined to approve the order that was made by [J]udge Biderman. . . . I think it’s a matter of equity at some point. . . . That’s my tentative. Relative to work that was done after, I would be inclined to reserve ruling on that” Counsel for Roger M. and Brian Corman argued that the court was “not in a position to make any [fee] awards” and “that all fee petitions must simply be put over until [the court] has had a chance to listen to the evidence.” The court took the fee petitions under submission.

On May 30, 2013 the probate court issued a ruling on the submitted matters. The court approved payment of \$414,112.50 to counsel for Roger W. Corman, \$250,000 to Roger W. Corman for reimbursement of attorneys’ fees advanced to counsel, and \$9,177.88 in costs, all from the Pacific Trust. The court also approved all fees previously paid to or on behalf of Roger W. Corman and authorized the trustee of the Pacific Trust “to pay all future invoices submitted to it/them” by his attorneys “for legal services incurred in this proceeding or for the fees of the accountants related to the completion of the accountings for the years 2008-[2010] without the necessity of further Court order.”

The court also ruled that its orders were “without prejudice and subject to further allocation upon conclusion of the trial.”

The court also approved payment of \$489,677.68 in attorneys’ fees and costs to counsel for Julie Corman, \$80,674.98 in direct payment to counsel of outstanding fees, and \$409,002.70 to Julie Corman for reimbursement of attorneys’ fees she had advanced. The court ruled that the Pacific Trust could also advance fees and costs to counsel for Julie Corwin “subject to subsequent review, approval and allocation by this Court.”

Finally, the court confirmed the prior payment to the guardian ad litem of \$387,042 in fees, “which corresponds to the [amount] previously approved in the vacated order of Judge Biderman,” and \$36,450.38 in costs, and approved additional payments to the guardian ad litem of \$110,374 in fees and \$3,897.69 in costs, payable from the Pacific Trust. The court also approved the “prior payment of \$12,300” to the court-appointed Evidence Code section 730 tax expert. The court again stated, “These orders are without prejudice and subject to further allocation upon conclusion of the trial.” Roger M. and Brian Corman timely appeal from this order.⁹

DISCUSSION

A. *The Probate Court Did Not Abuse Its Discretion in Granting the Attorneys’ Fees and Costs Petitions*

We review a trial court’s order granting a request to pay an attorney for a trustee from the trust assets for abuse of discretion. (*Donahue v. Donahue* (2010) 182 Cal.App.4th 259, 268; see *Kasperbauer v. Fairfield* (2009) 171 Cal.App.4th 229, 234 [“if [a] statute expressly authorizes fees, the probate court ‘is vested with wide discretion

⁹ An order “[f]ixing, authorizing, allowing, or directing payment of compensation or expenses of an attorney” is appealable. (Prob. Code, § 1300, subd. (e); see *Leader v. Cords* (2010) 182 Cal.App.4th 1588, 1594-1595.)

in awarding counsel fees for services to a trust and its findings will not be disturbed in the absence of a showing of a palpable abuse of such discretion”’].) A “reviewing court will infer all findings necessary to support” an order granting attorneys’ fees “and all findings, express or implied, are reviewed under the substantial evidence standard.” (*Apex LLC v. Korusfood.com* (2013) 222 Cal.App.4th 1010, 1017; see *Finney v. Gomez* (2003) 111 Cal.App.4th 537, 545 [“[i]f the trial court has made no findings, the reviewing court will infer all findings necessary to support the judgment and then examine the record to see if the findings are based on substantial evidence”]; *Osumi v. Sutton* (2007) 151 Cal.App.4th 1355, 1361 [reviewing implied finding of entitlement to attorneys’ fees for substantial evidence].)

Roger M. and Brian Corman contend that the probate court’s order awarding interim attorneys’ fees to the attorneys for the trustees and the guardian ad litem does not contain “required findings” that the legal services were reasonable and necessary and for the benefit of the trusts. They argue that the probate court’s May 30, 2013 order “is completely devoid of any analysis” of whether the approved attorneys’ fees were reasonable, “not needlessly duplicative, or for the benefit of the Trust rather than to defend violations of the Trust.” They argue further that the probate court “not only failed to include such an analysis, it could not possibly have made such an analysis, as it had not yet conducted (and still has not conducted) any proceedings or received any evidence from which to make such an analysis.”

“[T]he Probate Code is studded with provisions authorizing the trustee to hire and pay (or seek reimbursement for having paid) attorneys to assist in trust administration. For example, section 16247 empowers the trustee “to hire persons, including . . . attorneys . . . or other agents . . . to advise or assist the trustee in the performance of administrative duties.” Section 16243 provides, “The trustee has the power to pay . . . reasonable compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the . . . administration . . . and protection of the trust.” And section 15684, subdivision (a) provides in part, “A trustee is entitled to the repayment out of the trust property for . . . [¶] [e]xpenditures that were properly incurred

in the administration of the trust.”” (See *Kasperbauer v. Fairfield*, *supra*, 171 Cal.App.4th at pp. 234-235.) Thus, “[a]ttorneys hired by a trustee to aid in administering the trust are entitled to reasonable fees paid from trust assets” for services such as “[p]reparing the accounting and responding to the beneficiaries’ objections to that accounting” (*Id.* at p. 235; see *Wells Fargo Bank v. Superior Court* (2000) 22 Cal.4th 201, 213 [“[u]nder California law, a trustee may use trust funds to pay for legal advice regarding trust administration [citation] and may recover attorney fees and costs incurred in successfully defending against claims by beneficiaries”]; *Rudnick v. Rudnick* (2009) 179 Cal.App.4th 1328, 1333 [“attorneys hired by a trustee to aid the trust are entitled to reasonable fees paid from the trust assets,” including “attorney fees incidental to litigation that benefits the trust”]; see also Prob. Code, § 1003, subd. (c) [attorneys’ fees for guardian ad litem].)

None of these statutes or authorities requires that the court make specific factual findings in an order awarding attorneys’ fees. In civil cases, “there is no general rule requiring trial courts to explain their decisions on motions seeking attorney fees.” (*Gorman v. Tassajara Development Corp.* (2009) 178 Cal.App.4th 44, 101; see *Lockaway Storage v. County of Alameda* (2013) 216 Cal.App.4th 161, 193 [“[n]o specific findings reflecting the court’s calculations [are] required”]; *Ventura v. ABM Industries Inc.* (2012) 212 Cal.App.4th 258, 275 [“[a] trial court is not required to issue a statement of decision for an attorney fee award”].) Roger M. and Brian Corman cite no authority that the rule is or should be any different in probate cases. More important, because Roger M. and Brian Corman never requested any factual findings, they cannot now complain that the probate court failed to make any. (See *Hellweg v. Cassidy* (1998) 61 Cal.App.4th 806, 809 [“[w]here findings of fact and conclusions are not requested, they are waived and every intendment is indulged in favor of the judgment”]; *Estate of Ruchti* (1993) 12 Cal.App.4th 1593, 1604 [having failed to make a request for written findings, “appellant has waived entitlement thereto and cannot successfully raise the issue on appeal”].)

Moreover, the probate court impliedly found that the attorneys' fees incurred by the trustees were reasonable, non-duplicative, and for the benefit of the trusts. The substantial evidence that supports these findings included several large sets of detailed documentation of the work performed by the attorneys for the trustees. Counsel for Roger W. Corman and for Julie Corman provided the court with lengthy declarations describing the work they had done for the trustees in defending the claims brought by Roger M. and Brian Corman and copies of attorney time sheets confirming the nature of the work and the amount of time spent on each task. They also provided detailed breakdowns of the costs incurred in the litigation.

Roger M. and Brian Corman did not object to the admissibility of any of this evidence, and, although they asked the court "to decide whether the work allegedly done by" counsel for the trustees and the guardian ad litem was "overlapping and duplicative," they did not cite any evidence or examples of unreasonable or duplicative billing. (See *Lunada Biomedical v. Nunez* (2014) 230 Cal.App.4th 459, 488 ["[g]eneral arguments that fees claimed are excessive, duplicative, or unrelated do not suffice," and "[f]ailure to raise specific challenges in the trial court forfeits the claim on appeal"]; *Gorman v. Tassajara Development Corp.*, *supra*, 178 Cal.App.4th at p. 101 ["[t]he party opposing the fee award can be expected to identify the particular charges it considers objectionable"]; *In re Marriage of Feldman* (2007) 153 Cal.App.4th 1470, 1496 [failure to object to the amount of fees sought or to the sufficiency of documentation submitted in support of request for attorneys' fees forfeits the right to challenge the amount of the award on appeal]; *Robinson v. Grossman* (1997) 57 Cal.App.4th 634, 648 [failure to object that the opposing party's attorney fees were not sufficiently documented forfeits the right to raise the issue on appeal].) Nor do they on appeal point to any charges or category of charges that they contend shows unreasonable or excessive billing by any of the attorneys for the trustees.

Finally, contrary to the Corman sons' main argument, the probate court did not have to wait until the completion of the second trial to make an award of attorneys' fees incurred to date. "Nothing in the Probate Code or case law requires that attorneys who

aid a trustee in trust administration must await a final adjudication of the beneficiaries' claims against the trustee to receive compensation." (*Kasperbauer v. Fairfield, supra*, 171 Cal.App.4th at p. 236.) Indeed, "[a]s a general rule, a trustee is ordinarily entitled to be compensated for services to the trust at the time they are rendered." (*Estate of Gilfillan* (1978) 79 Cal.App.3d 429, 436 & fn. 4.)

Roger M. and Brian Corman rely on two cases: *Estate of Gilmaker* (1964) 226 Cal.App.2d 658 and *Donahue v. Donahue, supra*, 182 Cal.App.4th 259. Both are distinguishable. In *Estate of Gilmaker* the Supreme Court had held in an earlier appeal that the trustee in that case had "failed to follow the trust directions" regarding where to keep trust funds and breached his duty under the trust to provide semi-annual accountings. (*Estate of Gilmaker, supra*, 57 Cal.2d at p. 631.) In the subsequent appeal, the Court of Appeal reversed an award of attorneys' fees to the trustee because, under the Supreme Court's decision, it had "been conclusively established that the trustee erred in its administration of the estate and that it had no sound basis for its resistance to the beneficiary's petition for its removal." (*Estate of Gilmaker, supra*, 226 Cal.App.2d at p. 662.) There was no such conclusive adjudication here. Indeed, unlike *Estate of Gilmaker*, this case involves an interim attorneys' fees award, which the Probate Code authorizes the court to make before there has been any conclusive adjudication. (See *Kasperbauer v. Fairfield, supra*, 171 Cal.App.4th at pp. 234-235.)

Donahue v. Donahue, supra, 182 Cal.App.4th 259, which also did not involve an interim fee award, involved issues and concerns that do not arise here. In *Donahue* the former trustee, in defending claims of self-dealing and conflict of interest, retained "[e]ight attorneys from three major law firms . . . , with four to five of those attorneys simultaneously appearing at the 14-day court trial." (*Id.* at p. 262.) In opposition to the motions to pay the fees billed by these attorneys from the trust, the beneficiary contested "the reasonableness of [the attorneys'] billings," "objected to the 'excessive duplication of work performed simultaneously between three large law firms,'" and "requested limited discovery on the amount and necessity of the fees" and sought a court-appointed referee "to review the time entries and make a recommendation to the court." (*Id.* at pp. 264-

265, 268.) When the trial court, “without explanation,” made awards of attorneys fees, “[b]oth sides objected to the trial court’s failure to specify how it arrived at the amount of the fees and costs and requested the court to provide reasons for its determination.” (*Id.* at p. 267.) The trial court refused to clarify its order and denied a motion for reconsideration. (*Ibid.*)

The Court of Appeal reversed, concluding that “simultaneous representation by multiple law firms posed substantial risks of task padding, over-conferencing, attorney stacking (multiple attendance by attorneys at the same court functions), and excessive research.” (*Donahue v. Donahue, supra*, 182 Cal.App.4th at p. 272.) The court stated that the trustee’s “spare-no-expenses strategy calls for close scrutiny on questions of reasonableness, proportionality and trust benefit.” (*Id.* at p. 273.) The court held that, “[i]n the particular circumstances here,” the record was unclear (even “pithy” and “cryptic”) about whether the trial court exercised its discretion to determine whether the requested attorneys’ fees were reasonable and benefitted the trust, and “whether the court exercised its discretion to carefully review the attorney documentation and determine their reasonableness and necessity, particularly in relationship to the trust’s interest and purposes.” (*Id.* at pp. 267, 270.)

Donahue was, in many ways, a unique situation, with several salient facts not present here. Most important, unlike the beneficiary in *Donahue*, Roger M. and Brian Corman did not challenge the reasonableness of the attorneys’ fees requested by the trustee, did not argue that there was any duplication in their bills or challenge the trustees’ retention of “multiple sets of attorneys from three major law firms to pursue [the] litigation,” and did not request discovery or ask the court (or a referee) to review and make findings about the reasonableness of the bills. (See *Donahue v. Donahue, supra*, 182 Cal.App.4th at pp. 265, 266, 268.) Nor is there any issue in this case of excessive duplication of work among multiple firms representing the trustees and the guardian ad litem; each trustee and the guardian ad litem retained only one law firm. In addition, unlike the beneficiary in *Donahue*, Roger M. and Brian Corman did not file motions for clarification and reconsideration asking the probate court “to specify how it

arrived at the amount of the fees and costs and request[ing] the court to provide reasons for its determination.” (*Id.* at p. 267.)¹⁰ The analysis in the probate court’s order is a little sparse. The record in *Donohue*, however, reflected double billing and unreasonable time, which the court concluded warranted heightened scrutiny. Roger M. and Brian Corman did not identify any such evidence in the trial court nor do they point to any on appeal.

B. *The Probate Court Did Not Adopt Void Orders by Judge Biderman*

Roger M. and Brian Corman also argue that the probate court’s order approving payment to the guardian ad litem improperly relied on and adopted Judge Biderman’s void orders because Judge Goetz’s order confirming “prior payment of [\$]387,042” to the guardian ad litem states that this amount “corresponds to the [amount] previously approved in the vacated [o]rder of Judge Biderman.” They argue that, because Judge Goetz did not receive any evidence or conduct “an independent evaluation of her own of the reasonableness and propriety of [the guardian ad litem’s] fees,” it was “manifest that she made her order by relying primarily – and inappropriately – on the void and vacated order of a disqualified Judge.”

It is true that Judge Goetz confirmed the payment of fees to the guardian ad litem in the same amount Judge Biderman had awarded. But that does not mean she failed to review the evidence submitted by the guardian ad litem and simply adopted a void order. To the contrary, we presume that the probate court reviewed the extensive documentation submitted by the guardian ad litem and approved the amount requested. (See *Taylor v. Nabors Drilling USA, LP* (2014) 222 Cal.App.4th 1228, 1250 [“[i]n the absence of evidence to the contrary, we presume that the trial court considered the relevant factors”]

¹⁰ Indeed, one of the orders in *Donahue* did not even “specify the amount of the fee award,” but “merely stated that it would allow the amount ‘prayed for in the petition with [several specified] exceptions.’” (*Donahue v. Donahue*, *supra*, 182 Cal.App.4th at p. 270.)

and we will uphold a ruling on attorneys' fees even in the "absence of an explanation" of the ruling]; *Rey v. Madera Unified School District* (2012) 203 Cal.App.4th 1223, 1244 [in ruling on a motion for attorneys' fees, "[i]t is the trial court's role to examine the evidence and we presume the trial court performed its duty"]; *Jacobson v Simmons Real Estate* (1994) 23 Cal.App.4th 1285, 1290 ["[a]bsent any indication to the contrary, we presume the trial court regularly performed its official duty and was sufficiently prepared to rule on the fee request"], disapproved on another ground, *Trope v. Katz* (1995) 11 Cal.4th 274, 292.) This is equally true when the trial court rules on a motion for attorneys' fees based on attorney declarations. (*Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1323.) Roger M. and Brian Corman did not argue in the trial court that any of the fees requested by the guardian ad litem and documented by the time sheets were unreasonable or improper, nor do they point to any indication in the record on appeal that the trial court did not fulfill its duty to review the evidence in support of the fee petition.

Moreover, the fact that Judge Goetz's order approved the same amount of fees for the guardian ad litem that Judge Biderman had approved was not an accident. Judge Biderman approved attorneys' fees for the guardian ad litem of \$387,042, and the Pacific Trust had paid this amount. The guardian ad litem's subsequent petition sought confirmation of the amount that had already been paid. The guardian ad litem filed the petition asking Judge Goetz to confirm the award of fees by Judge Biderman for the very reason that Judge Biderman's prior order was void. The guardian ad litem was not asking for anything different from what he had been paid, and Judge Goetz confirmed that amount.

C. *The Probate Court's Order That the Trustees May Pay Future Attorneys' Fees Without a Prior Court Order Was Not an Abuse of Discretion*

The probate court's May 30, 2013 order authorized the trustees "of the Pacific Trust to pay all future invoices submitted to . . . them by [counsel for Roger W. Corman] for legal services incurred in this proceeding or for the fees of the accountants related to

the completion of the accountings for the years 2008[-]2010 without the necessity of further Court order.” As noted, the order also states that it is “without prejudice and subject to further allocation upon conclusion of the trial.” Roger M. and Brian Corman argue that this order was improper because it authorized payment of “all future attorney fees in this proceeding to the lawyers for Roger W. Corman from the [Pacific] Trust, without setting forth any conditions or requirements, and without any limitation as to the amounts, and without any further court order.” Roger M. and Brian Corman fear that their father “and his lawyers could actually drain the Trust on the ground they were authorized to do so; and even if the trial court were later to conclude that the fees taken were inappropriate or excessive, there is no assurance that they could or would make[] any subsequently required repayment.”

We see no impropriety in the probate court’s order authorizing the trustees to pay counsel for Roger W. Corman and the accountants preparing the 2008-2010 accountings without an advance court order, but subject to court review and approval of the trustee accountings and final adjustment and allocation. As discussed, the Pacific and MG Trusts expressly, and the Tessa Trust impliedly, authorize the trustees to pay attorneys’ fees and accounting expenses from the trust without a prior court order. It was the probate court, Judge Karlan, who in June 2010 imposed the requirement of a court order approving payment of attorneys’ fees before the trustees could pay those fees from trust assets. It was the probate court, Judge Goetz, who decided that this additional requirement was no longer necessary. Neither order was an abuse of discretion. A probate court does “not abuse its discretion in ordering that reasonable attorney fees be paid from trust assets as those fees are incurred.” (*Kasperbauer v. Fairfield, supra*, 171 Cal.App.4th at p. 235; see *Estate of Gilfillan, supra*, 79 Cal.App.3d at p. 436 & fn. 4 [under predecessor Probate Code statutes, a trustee is entitled to payment without a prior court order]; cf. Cal. Rules of Court, rule 7.755(a) [prohibiting a guardian and conservator, but not a trustee, from receiving compensation without first obtaining a court order].)

Finally, the beneficiaries are protected from an inappropriate “drain” on trust assets because the probate court retains jurisdiction to review the reasonableness of compensation paid to the attorneys. (See *Estate of Gilfillan*, *supra*, 79 Cal.App.3d at pp. 436-437.) The probate court can remedy any excessive or unreasonable attorneys’ fees paid to counsel for Roger W. Corman by reviewing the trustees’ accountings and imposing a surcharge for any excessive amounts. (See *id.* at p. 437 [“the taking of advance compensation payments may subject [the trustees] to the risks of a surcharge for any excessive payments, plus an additional surcharge for interest”].)

D. *The Probate Court’s Order Directing the Trustees of the Pacific Trust To Pay Fees and Costs Incurred by the Trustees of the Tessa and MG Trusts Is Not Reversible Error*

Roger M. and Brian Corman argue that the probate court erred by ordering the Pacific Trust to pay for legal services provided to the trustees for all three trusts. They argue that nothing in the record “show[s] that legal services rendered in connection with the Tessa Trust or the MG Trust were for the benefit of the Pacific Trust,” and that the fact that the Pacific Trust “appeared to have the most readily available liquid assets” was not a basis for charging all fees against the assets of that trust.

Roger M. and Brian Corman are right, to a point. Each trust should bear the expense of legal services provided to that trust. The practice of paying for legal services provided to the trustees of the MG and Tessa Trusts with money from the Pacific Trust appears to have started with Judge Karlan’s order that the Pacific Trust, the trust with the most liquid assets, pay all of the fees for the three trusts and the fees of the guardian ad litem. The court should have attempted to make some appropriate allocation among the trusts, which counsel for Roger W. Corman, in suggesting that the court “might also wish to consider allocating the fees/costs amongst the three trusts on the basis of the time devoted to the trust’s issues [and the] claims made that relate to each trust,” estimated was approximately 85 percent for the Pacific Trust, 10 percent for the Tessa Trust, and 5 percent for the MG Trust. The probate court’s May 30, 2013 order, however, was an

interim award of attorneys' fees that was "subject to further allocation upon conclusion of the trial." At the hearing, the court even stated that it would authorize the Pacific Trust to pay the attorneys' fees for all three trusts and then make an allocation at a later date. Therefore, when the court rules on future petitions for attorneys' fees, the court will be able to, and should, make an allocation among the three trusts so that each trust is responsible for paying the fees of the attorneys for its trustees.

DISPOSITION

The orders are affirmed. Respondents' request for judicial notice is denied. Respondents are to recover their costs on appeal.

SEGAL, J.

We concur:

PERLUSS, P. J.

ZELON, J.